

Nicola Weaver v. David Weaver  
Addison Dkt No 138-7-09  
Sup Ct Dkt No 2016-306

Plaintiff/Appellant Nicola Weaver  
Defendant/Appellee David Weaver

History:

- 2011- Divorce after 16 years of marriage and 4 children- Wife 50 yo; Husband 43 yo  
Alimony- \$2916/mo for her needs but also a “compensatory aspect”  
Alimony ends at death of a party, wife’s remarriage or her retirement and drawing pension and soc sec
- 2013- Defendant files Mot to Modify Alimony- modified to \$2500 a month retroactive to 7/13
- 2014- Defendant – 2<sup>nd</sup> Mot to Modify- job loss  
Alimony reduced to \$1500 back to 10/14
- 2015- Defendant ordered to pay arrears as of 5/31/15 of \$8640 for failure to disclose \$202,000 in future lost earnings he received in 2013
- 2016- Defendant’s appeal- reversed and remanded- trial court finds Defendant’s reasonable needs exceed his income and reduce alimony to zero retroactive relief back to October 29, 2014- Wife appealed
- 2017 June 23, 2017 decision from the VT Supreme Court

Issues-

**I. Modification of the Alimony and its Compensatory Aspect**

Remand for trial court to make specific findings on how much of the award was compensatory to determine what part of the alimony is subject Compensatory alimony –

Court- “However, our case law had not yet answered the central question at issue in this appeal: does a trial court have the discretion to reduce to zero a permanent maintenance award that appears to be purely compensatory in nature?”

Analysis of compensatory awards based on the marital “arrangement” where one party works, advances, earns and the other cares for children, house, all family needs or works to support the other through school to enable increased earning. Compensatory alimony gives both parties the benefit of the arrangement they made.

“The compensatory aspect of the initial award should reflect, to the extent possible, the actual bargain the parties intended.” ¶27

“While all maintenance with a compensatory purpose is permanent maintenance, not all permanent maintenance is necessarily compensatory.” ¶25

“The compensatory portion of a permanent maintenance award is not subject to downward modification unless the trial court makes an additional affirmative finding that an unexpected change has rendered the obligor spouse no longer able to potentially reap the benefits of the recipient spouse’s contribution to the marriage which triggered the compensatory portion of the permanent award.” ¶28

Upshot: “If husband retains the benefit of his aspect of the marital bargain, increased earning potential in part related to wife’s contributions for which she is receiving a compensatory component of permanent maintenance, then wife is entitle to her portion of the bargain. This, husband’s obligation for the compensatory payment remains and his current inability to pay it means a debt to wife accrues for the unpaid portion fo maintenance which is compensatory in nature.” ¶29

## **II. Disclosure of Financial Information from Current Spouse**

“The trial court erred when it considered the expenses that husband has incurred as a result but concluded that it could not also consider the financial assistance his new wife has provided insofar as that assistance impacts his ability to meet his reasonable needs while also meeting wife’s reasonable needs.” ¶35

“On remand, the court should allow wife to discover husband’s new wife’s income, not to impute it to husband’s maintenance obligation, but for the purpose of determining his overall financial situation.” ¶

## **III. Maintenance Offset Against Child Support**

**Offset of overpayment allowed by trial court against both unpaid spousal support and child support.**

“Because they serve different purposes and are intended to benefit different people, a court may not offset a maintenance overpayment against either past or future child support Obligations.” ¶42